Supreme Court, U.S.
FILED

No. 95-1005 OCT 18 1995

OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

October Term, 1995

Virginia Y. Morata

Petitioner,

V.

United States Postal Service

Respondent.

On Petition For A Writ Of Certiorari
To the United States Court of Appeals
For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

Virginia Y. Morata
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22 pp

QUESTION PRESENTED

Is it unconstitutional for the District Court to dismiss the complaints alleging breach of contract without allowing the petitioner the day in Court to present substantial factual evidence (this opportunity has always been taken away by the Court), to prevent the petitioner from filing any more complaints against the United States Postal Service even though the 1982 agreement between the petitioner and the USPS states that the petitioner will "not be the victim of harassment or reprisals of any kind in the future due to previously filed EEO complaints or any other reason" without undergoing a pre-filing review order against the petitioner by Judge Charles Legge, and to have the petitioner pay for the defendant's costs for conducting a deposition without being warned of such a charge? Since when does filing complaints (some of which full relief was not accepted for good cause) allow the district Court to violate the petitioner's constitutional rights under the Fifth and Fourteenth Amendment to the United States Constitution?

PARTIES TO THE PROCEEDINGS

Virginia Y. Morata, the petitioner herein, and the respondent United States Postal Service are the parties to this proceeding.

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Petitioner, Virginia Y. Morata, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit, refusing to overturn the district court's dismissals of complaints and entry of a pre-filing review order and to address the issue of defendant's costs for conducting a deposition.

OPINIONS BELOW

The opinion of the Court of Appeals is reported as Virginia Y. Morata v. United States Postal Service and appears in Appendix A,B,C,D, and E. The written opinion of the United States District Court for the Northern District of California appears in Appendix F,G and H.

JURISDICTION

The Court of Appeals' Opinion in this matter was filed May 5, 1995. A timely Petition for Rehearing was filed on June 16, 1995. The Court of Appeals' denial of the Petition for Rehearing was issued on July 21, 1995, and is set forth in Appendix I and J.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment V to the United States Constitution is set forth in Appendix K. Amendment XIV to the United States constitution is set forth in Appendix L. Title VII of the 1964 Civil Rights Act is set forth in Appendix M.

STATEMENT OF THE CASE

I, Virginia Y. Morata, am the petitioner filing prose. I am not a professional attorney but I will try my best to show that the decision made by the Court of Appeals of the Ninth Circuit is unjust and unconstitutional. In all

of my complaints before the Court I have alleged "breach of contract." This claim is based on a 1982 agreement between the USPS and myself, in which the parties agreed that I, the petitioner, would "not be the victim of harassment or reprisals of any kind in the future due to previously filed EEO complaints or any other reason." Judge Charles Legge, in the status conference of April 29, 1994, said that "violation of the September 2nd, 1982 Agreement" tells him nothing. He refused to acknowledge my claim for "breach of contract" against the Postal Service. Judge Legge continued on to criticize the number of complaints I have filed as if I had an uncontrolled desire to file complaints for only the sake of filing. He is wrong because of the fact that I have filed complaints each time the Postal Service has violated my civil rights, which is against the law, according to the Civil Rights Amendments to the U.S. Constitution. According to Judge Legge, all of my complaints in the past, including the ones that he dismissed, were all found to be meritless by the Equal Employment Opportunity Commission. It appears to me that Judge Legge wants me to stop there and not to exercise my right to sue in District Court. His order of May 16, 1994 precludes my filing any further actions, unless the proposed filing has first been approved by a judge or magistrate judge of the Federal District Court. Judge Legge has practically barred me from filing anymore complaints without having to undergo the pre-filing review ordered by Judge Legge. I find this to be highly unconstitutional! Judge Legge has violated my rights to equal protection of the law and due process of law as guaranteed by the Fourteenth Amendment. I am still being subjected to reprisal, retaliation, and harassment by the United States Postal Service. Worst of all, I do not have protection of the law. Judge Legge goes on to say that I made no misrepresentation of my financial condition to the Court, but came very close to it, and when

he adds this to the number of lawsuits I filed, this appears to him as a pattern. I am not following any pattern that the Judge has in mind. I am following the proper procedures after being issued my right to sue letter from the Equal Employment Opportunity commission. The issues of my complaints are clear, yet Judge Legge states that both he and Magistrate Judge Brazil have difficulty focusing on what the complaints are addressing. Judge Legge accuses me of not complying with the requirements of his April 29th, 1993 order to file written specifications of my claims. If you read what I submitted, you will find that I complied with the court's April 29th order. After undergoing investigation and examination by the Equal Employment Opportunity Commission, it becomes suspicious that, according to Judge Legge, my complaints, my claim for "breach of contract," and his order of April 29, 1993 lack the degree of specificity. If this were true, my complaints would never have gotten this far. My complaints have passed the EEOC proceedings and so the focus is clear. On December 11, 1992, these same cases came before the District Court before the presiding Judge Legge. As a result of the hearing, Judge Legge ordered on December 18, 1992, that the filing fees be paid and that the cases <u>not</u> be dismissed. I repeat that the cases were <u>not</u> dismissed by Judge Legge. Judge Legge, at the Court hearing, stated that my allegations of harassment, reprisal, and retaliation are nothing more than general categorical conclusions and that "there hasn't been anything submitted by the plaintiff to indicate any alleged harassing act motivated by discriminatory intent or an intent to retaliate." Judge Legge goes on the say, "there has been nothing but the plaintiff's own use of those words." Yet, instead of allowing me a day in court to have my hearing on the merits of the cases and to show substantial factual evidence through trial witnesses, documentation, etc. that the United States Postal Service did, in

fact, discriminate against the petitioner, Judge Legge dismissed the complaints. Of the five categories under the Malone case, the key one there is the public policy on trial of the merits. This category is outweighed by my right to have my day in court and the need to permit me to be heard on the merits. Judge Legge made no consideration of this category before his dismissal of the complaints were made. A day in court was the most meaningful action I could take, but the Court deprived me of this. Judge Legge states that I had no right to turn down "full relief" offered to me by the EEOC. In the 1982 Agreement with the Post Office, it was agreed that I would no longer be the victim of reprisal or harassments for EEO activity or any reason whatsoever for now and in the future. Full relief will provide me an environment free of discrimination, yet things have not changed for me at the Post Office. Today the harassments, reprisals, and retaliation still go on. After a "breach of contract," I am asked or required to sign the statement that the Post Office never discriminated against me. I feel that I am being forced to accept full relief for empty promises so that my complaint can be set aside or closed completely. According to Judge Legge, full relief is as far as I could possibly want and get. Judge Legge concludes that I am abusing the processes of the EEOC and the processes of the Court by inadequate allegations, failure to respond to orders, and simply the filing of complaints. The reasons stated at the April 29, 1994 hearing were the causes for Judge Legge to order dismissal of the complaints and the pre-filing review.

Even though I contended that the underlying decisions of Judge Legge violate my constitutional rights, the United States Court of Appeals from the Ninth Circuit affirmed the district court's dismissal and entry of a pre-filing review order. The Court of Appeals refused to address the defendant's costs for conducting a deposition.

REASONS FOR GRANTING THE WRIT

Certiorari should be granted, since a material point of fact or law has been overlooked in the decision or order of the District Court's dismissals and entry of a pre-filing review order, and in the Opinion by the United States Court of Appeals to affirm the dismissals and the pre-filing review order. The Opinion of the United States Court of Appeals for the Ninth Circuit also refuses to address the defendant's cost for conducting a deposition. The main point I wish to make is that federal employees brought under coverage of Title VII of the 1964 Civil Rights Act in 1972, have the right to a full trial de novo on employment charges after that complaint has been examined by the Civil Service Commission. The fact that Judge Charles A. Legge dismissed my cases for the reasons indicated in my appeal, is unconstitutional and prejudicial. Judge Legge has disposed or dismissed my cases without a trial, in violation of my due process, which is the constitutional guarantee of the Fifth and Fourteenth Amendment, providing that "a person may not be deprived of life, liberty, or property without the opportunity to prepare a defense and present it." The District Court and the United States Court of Appeals for the Ninth Circuit is also in violation of the Fourteenth Amendment, which guarantees equal protection of the law. Instead of looking at this material point of fact or law, the Ninth Circuit agrees with Judge Legge that my cases were dismissed because I file too many discrimination complaints against the Postal Service, my complaints are petty and without merit, a Breach of Contract (of no more harassment and reprisal by the Postal Service) does not exist, that I did not comply with the April 29th order of 1993, etc. Judge Legge and the Ninth Circuit is wrong to dismiss my cases for the reasons listed above. I did comply with the April 29th order by Judge Legge; I am not frivolous; my

discrimination complaints all have merit; I was denied my day in court to provide substantial factual evidence; I have not rejected an offer of full relief because of the fact that the Post Office has not offered true full relief. In a democratic society, I have the right to file a discrimination complaint when my civil rights and constitutional rights have been violated. The pre-filing review order by Judge Legge is clearly unconstitutional, and I have not abused the processes of the Court. My cases should never have been dismissed because my right to a day in court outweighs the public policy favoring the disposition of cases on their merits. I am the victim of discrimination where a breach of contract is concerned, and if I do not accept full relief with empty promises and deceptions, then I should be allowed to turn to the Court for protection under the law abided by the Fourteenth Amendment of Equal Protection Under the Law. "If the Court chooses to find full relief in the empty promises the Post Office has become so used to making, the Court will be effectively cutting off the only forum in which an employee suffering discrimination and harassment can turn for relief. The result of which undoubtedly will be the continued unrest within the United States Post Office.

This Court should grant certiorari to explicitly rule that the order to dismiss my complaints and the order for pre-filing review for the reasons given by Judge Legge of the District Court and the affirmation of Judge Legge's orders by the United States Court of Appeals for the Ninth Circuit (and the issue of the defendants' costs for conducting a deposition) are unconstitutional according to the constitutional and statutory provisions mentioned in this complaint.

CONCLUSION

For the reasons set forth above, a writ of certiorari should issue to review the judgment and opinion of the Court of Appeals in this matter.

Dated: October 17, 1995.

Respectfully submitted,

Virginia Y. Morata

VIRGINIA Y. MORATA

Petitioner

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

VIRGINIA Y. MORATA Plaintiff, Appellant v. UNITED STATES POSTAL SERVICE Defendant-Appellee	No. 94-16073 D.C.No.CV-91-01248-CAL FILED MAY 5 1995 CATHY A. CATTERSON, CLERK U.S. COURT OF APPEALS
VIRGINIA Y. MORATA Plaintiff, Appellant v. UNITED STATES POSTAL SERVICE Defendant-Appellee	No. 94-16074 D.C.No.CV-91-08134-CAL
VIRGINIA Y. MORATA Plaintiff, Appellant v. UNITED STATES POSTAL SERVICE Defendant-Appellee	No. 94-16075 D.C. No.CV-92-04143-CAL

Appeals from the United States District Court
for the Northern District of California

APPENDIX A

VIRGINIA Y. MORATA Plaintiff Appellant	)	No. 94-16343
	)	D.C. NO.CV-94-00075-FMS
v.	)	
	)	MEMORANDUM*
UNITED STATES POSTAL SERVICE Defendant - Appellee	)	

*Appeal from the United States District Court for the Northern District of California
Fern M. Smith, District Judge, Presiding

Submitted May 2, 1995**

Before: WALLACE, Chief Judge, HUG, and NOONAN, Circuit Judges

In appeal nos. 94-16073, 94-16074, and 94-16075, Virginia Morata, an employee of the United States Postal Service ("USPS") appeals the dismissals of her actions alleging workplace harassment and breach of contract[1] as well as the entry of a pre-filing review order against

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds these cases suitable for decision without oral argument. Fed. R. App, P. 34 (a); 9th Cir. 34-4. Therefore, Morata's request for oral argument is denied.

[1] This claim is based on a 1982 agreement between Morata and the USPS in which the parties agreed that Morata would "not be the victim of harassment or reprisals of any kind in the future due to previously filed EEO Complaints or any other reason."

her. In appeal no. 94-16343, Morata appeals a clerk's order which prevented the filing of a new action against the USPS in light of the challenged pre-filing review order. Morata contends that these underlying decisions violate her constitutional rights. We affirm the district court's dismissals and entry of a pre-filing review order. However, we lack jurisdiction to consider the refusal to file the complaint in appeal no. 94-16343.

Dismissal of complaints

We have jurisdiction to review the district court's dismissals under 28 U.S.C. § 1291. Recognizing our duty to "preserve the district court's power to manage its dockets," Ferdish v. Bonzelet, 963 F. 2d 1258, 1261 (9th Cir.), cert. denied,113 S. Ct. 321 (1992), we review the dismissal of complaints pursuant to Fed. R. Ci., P. 41(b) for an abuse of discretion. In re Eisen, 31 F.2d 1447, 1451 (9th Cir. 1994).

We have identified five factors to guide our review: "(1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring the disposition of cases on their merits; and (5) the availability of less drastic sanctions." id. (citation omitted); see also Malone v. United States Postal Service, 833 F.2d 128, 130-33 (9th Circ. 1987) (discussing application of factors), cert. denied sub nom., Malone v. Frank, 488 U.S. 819 (1988).

In each of the three complaints which were dismissed, Morata made numerous general allegations about acts of harassment and reprisal by defendant. At a pre-trial conference, the district court ordered Morata to provide specific details concerning her allegations -- e.g., the name of the perpetrator, the date of the incident, and the precise nature of the conduct -- and warned her

that her claims would be dismissed if she failed to comply with these instructions. Morata, who was represented by counsel at the time, did not provide the details which the district court requested.

Given the deference we accord to the district court on the first two factors, In re Eisen, 31 F.3d at 1451-52, the reasonable instructions contained in the pre-trial order with which Morata did not comply, and the warning the district court gave to Morata that her claims would be dismissed for non-compliance, see Malone, 833 F.2d at 132 (warning of dismissal satisfies requirement that the district court consider alternatives to dismissal), we conclude that the district court did not abuse its discretion by dismissing Morata's claims pursuant to Fed. R. Div. P. 41(b).[2]

Entry of pre-filing review order

We have jurisdiction to review the entry of a pre-filing review order against Morata pursuant to 28 U.S.C. § 1291.[3] See Moy v. United States, 906 F.2d 467, 470 (9th Cir.

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[2] Defendant also argues that Morata's refusal to accept full relief during proceedings before the Equal Employment Opportunity Commission in appeal no. 94-16075 justifies a grant of summary judgment in their favor. Because the district court did not abuse its discretion in dismissing the complaints under Fed. R. Civ. P 41(b), we need not address this independent ground for affirming relief in favor of the defendants.

[3] Defendant argues that we do not have jurisdiction to consider the entry of the pre-filing review order because Morata filed a motion for reconsideration after filing her notice of appeal and did not then file an amended notice of appeal following the district court's order reaffirming the entry of the pre-filing review order. Defendant's argument lacks merit. See Fed. R. app. 19 F. 3d 444, 445 (9th Circ. 1994).

1990). We review the entry of such orders for an abuse of discretion, but recognize that they must be "narrowly tailored and [should be] rarely used." Id. at 469-70.

We have established the following guidelines for the district court to utilize when entering a pre-filing review order:

> (1) a plaintiff must be given adequate notice to oppose a restrictive pre-filing order before it is entered; (2) a trial court must present an adequate record for review by listing the case filings that support its order; (3) the trial court must make substantive findings as to the frivolousness or harassing nature of the plaintiff's filings; and (4) the order must be narrowly tailored to remedy only the plaintiff's particular abuses.

O'Loughlin v. Doe, 920 F.2d 614, 617 (9th Cir. 1990) (citing Delong v. Hennessey, 912 F.2d 1144, 1147-49 (9th Cir. 1990). We affirm for the reasons stated by the district court.

Refusal to file subsequent complaint

We lack jurisdiction to review the clerk's order which prevented Morata from filing a subsequent complaint against the USPS. Compare with Serine v. Peterson, 989 F.2d 371, 372-73 (9th Cir. 1993).[4]

AFFIRMED.

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[4] In her reply brief, Morata contends she should not be ordered to pay defendant's costs for conduction a deposition. Because Morata presents this claim for the first time on appeal, we do not address the issue. See Thompson v. Commissioner, 631 F.2d 642, 649 (9th Cir. 1980). cert. denied, 452 U.S, 961 (1981).

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

VIRGINIA Y. MORATA Plaintiff,	)	C-91-1248 CAL C-92-1843 CAL C-92-4143 CAL
v.	)	ORIGINAL ORDER FILED
UNITED STATES POSTAL SERVICE Defendant	)	MAY 16, 1994 RICHARD W. WIEKING CLERK, U.S. DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA

On April 29, 1994, the Court held a hearing on the defendant's motion to dismiss or, in the alternative, for summary judgment. After consideration of the parties' papers, and the entire record of these cases, and for the reasons stated at length on the record at the April 29, 1994 hearing, it is hereby

ORDERED: that the defendant's motion to dismiss or, in the alternative, for summary judgment is **GRANTED**; and it is further

ORDERED: that these cases are DISMISSED and judgment shall be entered for defendant, United States Postal Service, in all three cases captioned above.

So ORDERED this 16th day of May, 1994

s/
HONORABLE CHARLES A. LEGGE
United States District Judge

APPENDIX F

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

VIRGINIA Y. MORATA Plaintiff, v. UNITED STATES POSTAL SERVICE) Defendant	C-91-1248 CAL C-92-1843 CAL C-92-4143 CAL (Related Cases) ORIGINAL JUDGMENT FILED MAY 16, 1994 RICHARD W. WIEKING CLERK, U.S. DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA

By virtue of the Court's Order granting the defendant's motion to dismiss or, in the alternative, for summary judgment, and for all the reasons stated on the record on April 29, 1994, it is hereby

ORDERED: that the judgment be entered for defendant, United States Postal Service, in all three cases captioned above, and that these cases are hereby DISMISSED.

So ORDERED this 16th day of May, 1994

s/
HONORABLE CHARLES A. LEGGE
United States District Judge

APPENDIX G

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

VIRGINIA Y. MORATA Plaintiff, v. UNITED STATES POSTAL SERVICE) Defendant	C-91-1248 CAL C-92-1843 CAL C-92-4143 CAL (Related cases) ORDER

ORIGINAL FILED
MAY 16, 1994
RICHARD W. WIEKING
CLERK, U.S.
DISTRICT COURT
NORTHERN DISTRICT
OF CALIFORNIA

For the reasons stated in open court on April 29, 1994, and based upon consideration of the entire record in the above captioned cases and the records of all other cases filed by the above-named plaintiff in this Court, is hereby

ORDERED: that the Clerk is directed to accept no future Complaints or pleading of any kind filed by or on behalf of Virginia Morata against the U.s. Postal Service or its employees or agents, unless such filing has first been approved by a judge or magistrate-judge of this Court. See DeLong v. Hennessey, 912 F.2d 1144 (9th Cir.), cert. denied, 111 S.Ct. 562 (1990). If the plaintiff wishes some further opportunity to be heard on this matter (see Delong at 1147), she shall file a motion for reconsideration within 10 days of the date of this Order, stating specific reasons why such an Order should not be entered.

So ORDERED this 16th day of May, 1994

s/
HONORABLE CHARLES A. LEGGE
United States District Judge

APPENDIX H

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

VIRGINIA Y. MORATA Plaintiff, Appellant v. UNITED STATES POSTAL SERVICE Defendant-Appellee	No. 94-16073 D.C.No.CV-91-01248-CAL Northern California (San Francisco)
	FILED JULY 21 1995 CATHY A. CATTERSON, CLERK U.S. COURT OF APPEALS
VIRGINIA Y. MORATA Plaintiff, Appellant v. UNITED STATES POSTAL SERVICE Defendant-Appellee	No. 94-16074 D.C.No.CV-91-08134-CAL
VIRGINIA Y. MORATA Plaintiff, Appellant v. UNITED STATES POSTAL SERVICE Defendant-Appellee	No. 94-16075 D.C. No.CV-92-04143-CAL

APPENDIX I

VIRGINIA Y. MORATA Plaintiff, v. UNITED STATES POSTAL SERVICE Defendant	)	No. 94-16343 D.C.NO.CV-94-00075-FMS

Before: WALLACE, Chief Judge, Hug, and Noonan, Circuit Judges.

The petition for rehearing is denied.

APPENDIX J

AMENDMENT V TO THE UNITED STATES CONSTITUTION

Due process is the constitutional guarantee of the Fifth Amendment providing that a person may not be "deprived of life, liberty, or property" without the opportunity to prepare a defense and present it.

AMENDMENT XIV TO THE UNITED STATES CONSTITUTION

Due process is the constitutional guarantee of the Fourteenth Amendment sometimes known as the "Civil Rights Amendment" guarantees equal protection of the laws and due process of law.

TITLE VII OF THE 1964 CIVIL RIGHTS ACT

Chandler v. Roudebush (425 U.S. 840) decided by a 9-0 vote June 1, 1976, Stewart wrote the opinion, "Federal employees brought under coverage of Title VII of the 1964 Civil Rights Act in 1972, have the right to a full trial de novo on employment discrimination charges after that complaint has been examined by the Civil Service Commission.

APPENDIX M